

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

ANTONIO SMITH,

Plaintiff,

VS.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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**5:08-CV-23 (HL)**

**RECOMMENDATION**

Presently pending in this Social Security appeal is Defendant's Motion to Re-Open Case, and Plaintiff's Motion for Award of Attorney's Fees. (Docs. 18, 19).

***Motion to Re-Open (Doc. 18)***

On February 18, 2009, the magistrate judge previously assigned to this case recommended that the case be remanded to the Commissioner for consideration of new evidence. (Doc. 16). The Report and Recommendation was adopted by the district judge assigned to this case on March 31, 2009. (Doc. 17). Defendant states that the Commissioner reconsidered the case, and a favorable decision was rendered to Plaintiff. (Docs. 18; 19-1). Defendant requests that the Court re-open the case and affirm the decision of the Commissioner. Defendant indicates that Plaintiff's counsel has been contacted, and does not oppose the granting of this Motion.

Accordingly, it is the recommendation of the undersigned that Defendant's Motion to Re-Open Case and Affirm the Decision of the Commissioner be **GRANTED**, and the Commissioner's decision rendering a favorable decision to Plaintiff be **AFFIRMED** and judgment for Plaintiff be entered.

***Attorney's Fees (Doc. 19)***

On March 31, 2009, the district court entered an order remanding the Commissioner's decision in this matter to the administrative level for further proceedings. (Doc. 17). The Commissioner has now filed a Motion to Re-Open, stating that the matter has been reconsidered and a favorable decision has been rendered to Plaintiff. (Doc. 18). The undersigned has recommended re-opening the case, and affirming the Commissioner's decision awarding benefits to Plaintiff.

On February 22, 2012, Plaintiff filed a Motion for Attorney's fees pursuant to § 206(b) of the Social Security Act. (Doc. 19). Plaintiff's attorney seeks an award of attorney's fees in the amount of \$ 4,703.65, representing the remaining amount due for a contingency fee agreement of twenty-five percent (25%) of Plaintiff's past due benefits. The Commissioner has indicated that he does not oppose this petition for attorney's fees, with the exception that a judgment favorable to Plaintiff be entered first. (Doc. 20).

The Court may determine and allow a reasonable contingency fee for representation of a social security appeal, so long as it is not in excess of twenty-five (25) percent. *Jackson v. Commissioner of Social Security*, 601 F.3d 1268, 1271 (11th Cir. 2010). If the requested fee is within the twenty-five (25) percent limit, "the court must then determine whether the fee sought is reasonable for the services rendered." *Id.* (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002)). As the Commissioner has no objection to the amount, the Commissioner thereby appears to concede that the contingency fee is reasonable. Upon adoption of the Recommendation that judgment be entered on behalf of Plaintiff, the undersigned recommends that Plaintiff's Motion for Award of Attorney's Fees be **GRANTED**.

The undersigned further recommends that the Social Security Administration be **DIRECTED** to forward to Plaintiff's attorney forthwith \$ 4,703.65, said sum representing the remaining award amount due to Plaintiff's attorney based on a contingency fee agreement of twenty-five percent (25%) of Plaintiff's past due benefits.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to the recommendations contained herein with the Honorable Hugh Lawson, United States District Judge, WITHIN FOURTEEN (14) DAYS after being served with a copy of this Recommendation.

**SO RECOMMEND**, this 23<sup>rd</sup> day of March, 2012.

s/ **THOMAS Q. LANGSTAFF**

UNITED STATES MAGISTRATE JUDGE

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